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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,953	07/03/2003	Paul Tornaquindici	PAL-0001	6746
25225 7590 02/20/2009 MORRISON & FOERSTER LLP 12531 HIGH BLUFF DRIVE SUITE 100 SAN DIEGO, CA 92130-2040				
EXAMINER				
JEANTY, ROMAIN				
ART UNIT		PAPER NUMBER		
3624				
MAIL DATE		DELIVERY MODE		
02/20/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/613,953

**Applicant(s)**

TORNAQUINDICI, PAUL

**Examiner**

Romain Jeanty

**Art Unit**

3624

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 18-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This Final Office action is in response to the communication received November 4, 2008. Claims are pending in the application.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 18-28 have been considered but are moot in view of the new ground(s) of rejection.

### **Claim Rejections - 35 USC § 103**

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 18-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kane et al (US 20030014291)

Regarding claims 18, 25-27 and 29, Kane discloses receiving a store layout including existing products from a requestor [Paragraph 0031]; categorizing each said existing product by type [Paragraph 0033]; assigning shelf space to each said existing product, wherein said assigning includes placing each said existing product in close geographic proximity to another said existing product with the same type [Paragraphs 0034 and 0036] ; updating said store layout responsive to said assigning [Paragraphs 0038 and 0040]. Kane discloses all of the limitations above but fails to disclose

transmitting said store layout to said requestor in response to said updating. However, transmitting updated data to users is old and well known in the communication art to allow the users to make changes to the information. It would have been obvious to a person of ordinary skill in the art the time the invention was made to modify the disclosures of Kane et al to include transmitting the store layout to a requester because it would allow the requester to efficiently make changes to the store layout, thereby providing satisfaction to the requester.

*Applicant has amended the claims to recited wherein at least two of said existing products with the same type assigned in close geographic proximity have different storage unit temperature requirements. The examiner notes that stores have different area, lane, shelves and department. Storing different categories of items or products such as food are stored in different areas to be maintained at different related temperatures (i.e., frozen food such as ice-cream which is different from meat or dairy product or product or vegetable). Based on these analysis, product such as blueberry, spinach are two different products that need to be stored in different storage unit that has the same temperature. It would have been obvious to a person of ordinary skill in the art to include wherein at least two of said existing products with the same type assigned in close geographic proximity have different storage unit temperature requirements, in order to maintain food preservation and to deter the growth of bacteria.*

Regarding claim 19, Kane does not explicitly disclose wherein said shelf space includes **one or more** of a refrigeration unit. Shelf space to include a refrigeration unit is old and well known in the art in order to provide more space in the refrigeration unit. It

would have been obvious to a person of ordinary skill in the art to include a refrigeration unit in the disclosures of Kane in or to allocate space.

Regarding claim 20, Kane further discloses wherein said method further comprises: receiving a new product; categorizing said new product by said type; and assigning shelf space to said new product, wherein said assigning shelf space to said new product includes placing said new product in close geographic proximity to a said existing product with the same type [Paragraphs 0034 and 0036.

Claim 21 recites similar limitations of claim 18 above; therefore claim 21 is rejected under the same analysis relied upon of claim 18 above. In addition, Kane teaches a network; a user system in communication with said network; and a host system in communication with said network [i.e., facsimile, browser and GUI; Paragraphs 0012 and 0013).

Regarding claim 22. Kane further discloses a storage device in communication with said network wherein said store layout is located on said storage device [Paragraph 0024].

Regarding 23, Kane further discloses wherein said network is the Internet [i.e., facsimile, browser and GUI; Paragraphs 0012 and 0013].

Regarding 24, Kane further discloses the system of claim 21 wherein said network in an intranet [i.e., facsimile, browser and GUI; Paragraphs 0012 and 0013].

Claim 28 is a computer program product for grouping items in a grocery store, the computer program product comprising: a storage medium readable by a processing circuit and storing instructions for execution by the processing circuit for performing the

steps of method claim 18; therefore, claim 28 is rejected under the same analysis relied upon of claim 18.

### Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Romain Jeanty whose telephone number is (571) 272-6732. The examiner can normally be reached on Mon-Thurs 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Romain Jeanty/  
Primary Examiner  
Art Unit 3624

/RJ/  
February 13, 2009